APPEAL NO. 022696
FILED DECEMBER 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on October 7, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) sustained a compensable injury on _____. The appellant (carrier) appeals, arguing that the claimant was not in the course and scope of employment at the time of his injury as a matter of law. The carrier additionally argues on appeal that neither the "special mission" or "dual purpose doctrine" apply because the claimant was not traveling at the time of injury; that the claimant did not raise these arguments at the CCH; and that the facts do not support such arguments even if they had been raised. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). "Course and scope of employment" means, in pertinent part, "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer." Section 401.011(12). Conflicting evidence was presented on this issue. Although the hearing officer did not make a specific finding regarding the manner in which the claimant sustained an injury, the hearing officer noted that he found the testimony of the claimant's coworker more credible. The claimant's coworker testified that the claimant told her that he injured himself lifting his luggage on the way to the airport to travel to another city to attend a convention.

The hearing officer attempted to distinguish Texas Workers' Compensation Commission Appeal No. 012975, decided January 17, 2002. In that case the Appeals Panel found that there was sufficient evidence to support the hearing officer's statement that the claimant was injured at home while preparing to go to work. That fact finding was the basis of the hearing officer's decision in that case that the claimant did not sustain a compensable injury while in the course and scope of employment. We do not find this case distinguishable in any essential way from the case under appeal here. In both instances the claimant was injured while preparing to go to work, not while engaged in travel from one location to another. The fact that the claimant was driving directly to the airport does not alter the evidence that the hearing officer noted he found credible, that the claimant injured himself lifting his luggage prior to commencing travel.

The determination that the claimant was within the course and scope of his employment at the time he sustained an injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, we reverse the determination that the claimant sustained a compensable injury in the course and scope of his employment, and render a decision that the claimant did not sustain a compensable injury in the course and scope of his emloyment.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

CONCURRING OPINION:

Not every action that arguably would not be taken "but for" an aspect of employment is compensable. The action that the hearing officer found compensable in this case is equivalent to an injury that might occur lifting a briefcase on the way in to work, or a box of files, or any number of actions off premises and prior to reporting for work. I see no indication in the 1989 Act or reported cases that indicate an intention to open such a "Pandora's box." I therefore agree that the decision must be reversed.

_____
Susan M. Kelley
Appeals Judge